plaintiff and Krishnasamy very unreliable witnesses and that they would lie when it suited them.

The plaintiff had alleged that there are differences between a diesel forklift and an electric forklift and a two-layer forklift and a three-layer forklift. There is, however, ample evidence adduced by the defendants to show (1) that the only difference between a diesel forklift and an electric forklift is only the means of power supply to drive the forklift from point A to point B. In the diesel forklift power is provided by a diesel engine. In an electric forklift power is produced by battery and electric motor; (2) that the hydraulic system in the diesel and electric forklifts is the same; (3) that in replacing an oil seal the operation is the same with a two-layer forklift and a three-layer forklift, and (4) that the plaintiff was trained to repair and maintain either a diesel or an electric forklift.

The defendants have sufficiently established that using a block of wood to support the third layer is a safe method of work and it is a method of work which is accepted in the repairs of forklifts.

The plaintiff knew that the wooden block had to be used to support the third layer and he knew how it was to be used. There is no doubt that if he had done so this accident would not have happened. Instead of which he chose to use his own method of supporting the third layer by using the water pipe. If the plaintiff had been working in front of the forklift, as he had been trained to do, when the third layer was dislodged, his hands would not have been caught by the cross bar of third layer.

Then it is said that the defendants did not supply adequate equipment and appliances. The defendants have adduced ample evidence to show that the defendants provided sufficient equipment. The changing of the oil seal is a simple operation and all mechanics in the defendant company knew how to carry out the operation.

There is no doubt that the cause of the accident was the plaintiff's total disregard in complying with the system of work devised by the defendants for the oil seal changing operation.

The plaintiff's claim is dismissed with costs.

Claim dismissed.

Solicitors: *Murphy & Dunbar; Allen & Gledhill.*

PERTAMINA v. KARTIKA RATNA THAHIR & ORS.

[O.C.J. (Sinnathuray J.) September 27, 1982]
[Singapore – Originating Summons No. 308 of 1976]

Practice and Procedure – Statement of Claim – Application to strike out whole statement of claim on grounds that it was scandalous, frivolous or vexatious – Defence calculated to prejudice, embarrass and delay action – Application dismissed.

The facts in this case were the following: Mr. Thahir, an Indonesian national, was a senior employee and executive of the plaintiffs. He died on July 23, 1976. On that day, there was with the Sumitomo Bank Ltd. in Asian Currency Unit (ACU) deposits DM 53, 972, 374.12 and US$1,202,208.73 in the name of Mr. Thahir, and/or Mrs. Thahir, the first defendant.

On July 27, 1976 Mrs. Thahir went to the bank and demanded payment to her of sums totalling DM 8,310,982.99 and US$608,959.42. She also demanded that the balance of the said ACU deposits be transferred to her sole name. That same day, Mr Ibrahim Thahir, one of the children of the deceased, directed the bank not to pay out any monies to Mrs. Thahir until the respective beneficial interests of Mrs. Thahir and the estate of the deceased were determined. The bank was in a difficult position because of the two claims made against the bank by different persons. The bank applied to the court for relief. Mrs. Thahir was cited as first defendant. The two sons of the deceased were made the second defendants to represent the estate of the deceased. In June 1977, Pertamina were added as third defendants. In October 1979, Pertamina took out an interlocutory application for an issue to be stated and tried between the first, second and third defendants as to which of them was entitled to the sums of money represented by the ACU deposit accounts at the bank and for consequential orders.

In November 1979 the first defendant took out a Summons-in-Chambers for an order that the Originating Summons of the bank be dismissed on the grounds that it was misconceived. She sought also that an issue be ordered between Pertamina and herself in which Pertamina shall be plaintiffs and she shall be defendant.

The plaintiffs claimed that Mr. Thahir had unlawfully and improperly obtained monies as bribes and/or secret commissions which belonged to the plaintiffs; that he had put these illegal gains in the bank in the joint account of himself and the first defendant. The plaintiffs claimed that the first defendant was party to the wrongdoings of Mr. Thahir. The first defendant denied this. She said that "the fact that Thahir received income apart from his salary was not secret, but was known both to the plaintiffs by, *inter alia*, their said President Director, and to the plaintiffs' principal, the State Government, who consented thereto".

Held: (1) nowhere in the defence did the first defendant take the issue or even reserve the point that the plaintiffs' statement of claim did not disclose a reasonable cause of action in the issue;

(2) it is only in plain and obvious cases that recourse should be had to the summary process under 0. 18 r. 19. It cannot be exercised by a minute and protracted examination of the documents and facts of the case, in order to see whether the plaintiff really has a cause of action,

(3) so long as the statement of claim or the particulars disclose some cause of action, or raise some question fit to be decided by a judge, the mere fact that the case is weak, and not likely to succeed is no ground for striking it out;

(4) this application of the first defendant to nullify the order of court that the issue be tried was frivolous, vexatious, scandalous and an abuse of the process. It ought never to have been made;

(5) the fact that anyone else knew that Mr. Thahir had taken bribes and/or secret commission was altogether irrelevant to the claim of the plaintiffs because the plaintiffs' claim was that they did not consent. If the plaintiffs can make good their claim, not any one of the allegations made by the first defendant, even if proved to be true can amount to any defence in law;

(6) generally, it is not proper to use the names of third parties in proceedings, particularly when they are public officers or well-known and influential persons without scrupulously observing the rules of pleading and justifying the relevance of reference to such persons;

(7) in these proceedings, the scandalous allegations made by the first defendant against persons named in the defence were calculated to prejudice, embarrass and delay the fair trial of this action;

(8) it is the duty of the court to act at the earliest opportunity to strike out offending facts and matters in pleadings, particularly in the present proceedings where the pleadings were ordered by the court. Accordingly, parts of the defence should be struck out and the directions sought by the first defendant be limited to the issues or matters stated in those parts of the defence not expunged. The first defendant's application to strike out the statement of claim would therefore be dismissed.

Cases referred to:–

(1) *De La Rue* v. *Hernu, Peron & Stockwell Ltd.* [1936] 2 All E.R. 411.

(2) *Re Reading's Petition of Right* [1949] 2 All E.R. 68.

(3) *Belmont Finance Corporation Ltd.* v. *Williams Furniture Ltd. & Ors.* [1979] 1 All E.R. 118.

ORIGINATING SUMMONS.

Michael Sherrard Q.C. and *S. Selvadurai* for the first plaintiffs.

M. O. Saville Q.C. and *J Grimberg* for the first defendant.

H.L.Wee for the second defendants.

Cur. Adv. Vult.

Sinnathuray J.: The application of the plaintiffs in Summons-in-Chambers No. 2425 of 1981 to strike out certain paragraphs of the Defence of the 1st defendant, and the application of the first defendant in Summons-in-Chambers No.3199 of 1981 to strike out the whole of the Statement of claim of the plaintiffs and all their subsequent pleadings were heard one following the other, first the plaintiffs' application, then that of the first defendant's.

The two applications are made under the inherent jurisdiction of the court and/or Order 18 Rule 19 of the Rules of the Supreme Court and the grounds for the applications are the same. They are:

(1) that no reasonable cause of action/defence is disclosed; and/or

(2) that the matters complained of are scandalous, frivolous or vexatious; and/or

(3) that they may prejudice, embarrass or delay the fair trial of the action; and/or

(4) that they are otherwise an abuse of the process of the court.

To deal with the applications, I have to give a brief account of the history of these proceedings as it sheds light on the decisions I have made.

On July 30, 1976, the Singapore Branch of the Sumitomo Bank Limited ("the Bank") made an application in this Originating Summons No. 308/76 for relief by way of an interpleader. The facts that led to the commencement of the proceedings are these.

Mr. H.A. Thahir, an Indonesian national, was a senior employee and executive of the plaintiffs. He died on July 23, 1976. On that day, there was with the Bank in Asian Currency Unit ("ACU") deposits DM 53,972,374.12 and US$1,202,208.73 in the name of Mr. H. A. Thahir, and/or Mrs. K.R. Thahir.

On July 27, 1976 Mrs. Thahir went to the Bank and demanded payment to her of sums totalling DM8,310,982.99 and US$608,959.42. She also demanded that the balance of the said ACU deposits be transferred to her sole name. That same day, Mr. Ibrahim Thahir, one of the children of Mr. H.A. Thahir, directed the Bank not to pay out any monies to Mrs. K.R. Thahir from the said ACU deposits until the respective beneficial interests of Mrs. K.R. Thahir and the estate of Mr. H.A. Thahir are determined. Because of the two claims made against the Bank by different persons, the Bank was placed in a difficult position and it applied to the court for relief. Mrs. K. R. Thahir

was cited as the first defendant. Two sons of Mr. H.A. Thahir, Mr. Abubakar Thahir and Mr. Ibrahim Thahir were made the second defendants to represent the estate of H. A. Thahir. About a year later, on June 24, 1977, P.T. Pertambangan Das Gas Bumi Negara ("Pertamina") were added as the third defendants.

The next step in the proceedings came two years and four months later. On October 15, 1979, Pertamina, the third defendants, took out an interlocutory application for an issue to be stated and tried between the first, second and third defendants as to which of the said defendants is entitled to the sums of money represented by the ACU deposit accounts at the Bank in the name of Mr. H.A. Thahir, and/or Mrs. K.R. Thahir and for consequential orders and directions for the trial of the issue.

Before Pertamina's application could be heard, on November 30, 1979, Mrs. K. R. Thahir, the first defendant, took out a Summons-in-Chambers wherein she asked for an order that the Originating Summons of the Bank be dismissed on the ground that it was misconceived. More of interest now is that in this Summons-in-Chambers, she sought another order, that an issue be ordered between Pertamina and herself in which Pertamina shall be plaintiffs and she shall be defendant.

The two applications, that of Pertamina and that of Mrs. Thahir, came on for hearing before me in open court on March 10, 1980. At the end of the hearing the next day, on 11th of March, I held that the originating summons of the Bank for interpleader relief was not misconceived. I was also satisfied on the facts told to me and the questions of law canvassed that there were issues to be tried with the third defendants, Pertamina, as the plaintiffs and the first defendant, Mrs. K. R. Thahir, and second defendants, Mr. Abubakar Thahir and Mr. Ibrahim Thahir, as the first and second defendants in the issue respectively. On the next day, March 12, 1980, at the adjourned hearing in Chambers, I gave directions relating to the filing and serving of the pleadings between the parties.

What happened after that is described in the following corrected transcript of my oral Grounds of Decision given on March 21, 1981:

"The parties are here this afternoon in respect of draft orders which were submitted to the Registrar nearly a year later for approval in respect of the hearing that took place on the 11th and 12th of March 1980. This is the second time that the parties appear before me. They were here on the February 2, 1981 when I made the following orders:

(1) That the party directed as plaintiff submit draft orders for approval by me.

This afternoon there are two draft orders. Much discussion has been had and fresh draft orders are to be submitted for approval on the lines discussed.

(2) That the parties may either include in the draft orders or in a separate document the issues relating to the proceedings on which pleadings were ordered to be filed and served.

Again, only this afternoon has this been done and discussed. The issues have now been agreed by the parties and they are to be in a document separate and distinct from the draft orders.

(3) That all pleadings that had been filed be struck out.

Now Mr. Ross-Munro for the 1st defendant submits that this court has no power to strike out the pleadings that had been filed; alternatively, that if the court has a discretion in the matter, the discretion was wrongly exercised. Mr. Harry Wee for the second defendants supports Mr. Ross-Munro. He further submits that it should be left to the party or parties to apply to the court to strike out any part of the pleadings under the Rules of Court. Mr. Selvadurai for the plaintiffs associates himself with both Mr. Wee and Mr. Ross-Munro.

The first point I make on the order that the pleadings be struck out is this: that the pleadings directed to be filed under Order 17 are not pleadings as in an action commenced by a writ of summons. In an interpleader summons pleadings are ordered and directed by the court. That power is exercised by the court under Order 17 –

"5. (1) where on the hearing of a summons ... the court may order –

(a) ...

(b) that an issue between the claimants be stated and tried and may direct which of the claimants is to be plaintiff and which defendant."

The proceedings are different from that commenced by writ of summons where the interlocutory stages are governed by the Rules of Court. In my judgment, in interpleader proceedings the court has control of the proceedings at a very early stage, when the court directs issues to be framed and directs who shall be the plaintiff and who shall be the defendant or defendants.

Until today no issues had been framed on which pleadings could have been served and filed. As I said on the February 2, and I repeat it today, that when I set the time frame for the pleadings on the March 12, 1980 I assumed that parties would get on and comply with Order 17 Rule 5 and if they had difficulty in drafting the issues, I assumed that they would come back to me. Instead the parties have merrily exchanged prolix pleadings which have been filed in the Registry. In the way I look at it, I cannot accede to the

submission that this court has no power to exercise control in these matters.

Now that the issues are agreed, I direct that pleadings be settled on the issues as framed. I do not think that all labour is lost. From the pleadings that were filed before the issues were framed, it should not be difficult for counsel before me to recast them."

At the hearing in Chambers, I also inquired into the time the parties would require to prepare and file the new pleadings. I was soon told by Mr. Ross-Munro for the first defendant followed by Mr. Selvadurai for the plaintiffs that they were going to re-file the same pleadings that had been struck out. For my part, I made it clear that the parties were to plead to the issues. I also said then that I did not wish to express any opinion on the form of the pleadings but that the court would look into them at the proper time.

It is, I think, a matter for regret that the pleadings on the issue of the plaintiffs and the first defendant are identical to those pleadings that were struck out for non-compliance of the interpleader rules. The Statement of Claim of 23 pages was filed on April 3, 1981. The Request for Further and Better Particulars of the first defendant on the Statement of Claim which runs into 23 pages was served on the plaintiffs' solicitors the next day, on April 4, 1981. The Answers which are in 51 pages (excluding the attachments) was served on the first defendant's solicitors on April 6, 1981. The Defence of the first defendant set out in 15 pages was filed on April 8, 1981. The Request for Further and Better Particulars of the plaintiffs on the Defence of the first defendant was served on the first defendant's solicitors that same day. The Answers furnished in 22 pages was served on the plaintiffs' solicitors two days later, on April 10, 1981. The Reply of 14 pages was filed earlier, on April 9, 1981.

The issue between the plaintiffs and the first defendant is:

"WHETHER as the Plaintiffs affirm and the 1st and 2nd Defendants deny, the Plaintiffs are entitled to the monies being the ACU deposits and interest or proceeds in the Sumitomo Bank Ltd ("the said moneys") in the names of H.A. Thahir and/or Kartika Ratna Thahir on one or more of the grounds following:

a) belong to the Plaintiffs absolutely,

b) are held subject to a trust in favour of the Plaintiffs and not otherwise,

c) as being monies held and received to the Plaintiffs' use,

d) being the proceeds of crime or otherwise obtained unlawfully and/or in breach of contract by the said H.A. Thahir should not be disposed of otherwise than to the Plaintiffs,

e) that the 1st Defendant having assisted the said H.A. Thahir in his dishonest and fraudulent design and/or having participated therein is in any event liable to the Plaintiffs as a constructive trustee thereto.

And in the event that the court finds in favour of the Plaintiffs the said monies (and interest) be paid out to the order of the Plaintiffs."

The gist of the plaintiffs' claim is that Mr. H. A. Thahir had unlawfully and improperly obtained monies as bribes and/or secret commissions which belonged to the plaintiffs; that he had put these illegal gains in the Bank in the joint account of himself and the first defendant; and that the first defendant was a party to the wrongdoings of Mr. Thahir. The plaintiffs accordingly claim.

"(i) A declaration that all the moneys represented by the ACU deposit accounts in Sumitomo in the name of H.A. Thahir and/or Kartika Ratna Thahir belong to the Plaintiffs absolutely.

(ii) Alternatively a declaration that the said ACU deposit accounts at Sumitomo in the name of H. A. Thahir and/or Kartika Ratna Thahir are held subject to a trust in favour of the Plaintiffs and not otherwise.

(iii) Alternatively a declaration that the Plaintiffs are absolutely entitled to the ACU Deposit Accounts at Sumitomo or the proceeds thereof as being moneys had and received to the Plaintiffs' use.

(iv) A declaration that the said monies being the proceeds of crime or otherwise obtained unlawfully and/or in breach of duty by the said Thahir should not be disposed of otherwise than to the Plaintiffs.

(v) Alternatively a declaration that Kartika Ratna Thahir, having assisted Thahir in his dishonest and fraudulent design and/or having participated therein is in any event liable to the Plaintiffs as a constructive trustee of the sums standing to the credit of the said ACU deposit accounts.

(vi) An order that the said ACU deposits or the proceeds thereof be paid out to the order of the Plaintiffs and Sumitomo Bank Limited be thereupon and not otherwise discharged from all further liability to any person in respect thereof."

The substance of the Defence is a denial of the plaintiffs' claim. The first defendant puts the plaintiffs to prove their case. The crux of the defence is in paragraph 10 of the Defence. Before I come to it, there is one general observation that I want to make here on the Defence.

I agree with Mr. Sherrard for the plaintiffs that nowhere in the Defence or the Further and Better Particulars of the Defence does the first defendant

take the issue or even reserve the point that the plaintiffs' Statement of Claim does not disclose a reasonable cause of action in the issue. On the other hand, the plaintiffs plead in paragraph one of their Reply that

"The Plaintiffs will contend that the Defence of Kartika Ratna Thahir (Kartika) discloses no *bona fide* answer to the claim of the Plaintiffs. The Defence is scandalous, vexatious, calculated to delay the fair trial of this action and is an abuse of the process of this Honourable Court."

They further plead in paragraph 3 that the Reply is "without prejudice to the Plaintiffs' contentions that the Defence herein is in whole or in part demurrable and liable to be struck out on the grounds set forth in paragraph 1 above".

I now turn to paragraph 10 of the Defence which is an expanded denial of the gist of the plaintiffs' claim. The first defendant denies that "The sums represented by ... ACU deposits originated in whole or in part from the proceeds of the misappropriation by Thahir of the Plaintiffs' money and/or property and/or were in whole or in part the proceeds of bribes and/or secret commissions paid to or received by Thahir". She denies that Thahir misappropriated any of the plaintiffs' money or property. Then comes the affirmative part of her case. She says that it was not a term of Mr. Thahir's employment that he served the plaintiffs exclusively, that Mr. Thahir was free to supplement his small salary by remuneration earned in his private capacity, and "the fact that Thahir received income apart from his salary was not secret, but was known both to the Plaintiffs, by *inter alia* their said President Director, and to the Plaintiffs' principal, the State Government, who consented thereto."

In support of her affirmative case, the first defendant then gives particulars of facts and matters from which she says knowledge and consent must be inferred. In the particulars there are references to the President of Indonesia and his wife, touching on matters allegedly known to them about Mr. Thahir. There are also allegations of improper conduct against the former President Director of the plaintiffs, senior Government officials and other influential people in Indonesia. The plaintiffs say in their Reply that the Defence contains reckless assertions and allegations which the first defendant knows to be untrue or in which she has no *bona fide* belief.

After the Reply was filed, on May 28, 1981, the plaintiffs took out their application to strike out parts of the Defence on the grounds I have mentioned at the beginning. The first defendant's application to strike out the Statement of Claim was taken out 12 days before the hearing of the plaintiffs' application.

Mr. Sherrard for the plaintiffs took an objection *in limine* to the first defendant's application which I overruled. The two applications were heard for six days from July 27 to 31, 1981 and on October 1, 1981. Many arguments over a wide range of topics were advanced at the hearing, the written summaries of them are in 34 pages.

There are many charges made on the pleadings. For instance, there is a contest on how foreign law which is a matter of evidence must be pleaded as a fact. Mr. Saville for the first defendant also challenges the relevancy and/or sufficiency of matters of foreign law set out in the plaintiffs' pleadings. There are complicated questions of law sought to be resolved. One question is whether the receipt of bribes and/or secret commissions by an employee gives a right of property in them to the employer. Mr. Saville submits that the law allows the employer to sue for damages or for the amount of the bribes or commissions as a form of equitable debt, but that the bribes or commissions themselves are in no sense the property of the employer. There are other questions of law on facts which have yet to crystallise. For example, because the first defendant denies it, the plaintiffs have to prove the fiduciary relationship between the plaintiffs and Mr. Thahir before one can decide on the law that is to apply to the finding of fact. Finally, there are arguments on facts on the assumption that the facts pleaded are true.

The difficulty I have had is to decide how many of the arguments should I refer to in giving my decisions on these applications. And I have asked myself whether anything I say in this judgment will assist the parties to resolve the issue without a trial. The conclusion I have come to is that nothing I say here is going to be taken note of because the stakes are high and these parties are not likely to run out of money. So, many of the arguments canvassed in these applications are going to be repeated more vigorously at the trial. I shall therefore limit myself to the following grounds which are, in my view, sufficient to dispose of these applications.

The principles to be applied in applications to strike out pleadings are dealt with in the *White Book* in the commentaries to Order 18 Rule 19.

For the exercise of powers under this Rule, in 18/19/3 it is explained that only in plain and obvious cases that recourse should be had to the summary process under this Rule. The summary procedure under this Rule can only be adopted when it can be clearly seen that a claim or answer is on the face of it "obviously unsustainable". The summary remedy under this rule is only to be applied in plain and obvious cases when the action is one which cannot succeed or is in some way an abuse of the process or the case unarguable. It cannot be exercised by a minute and protracted examination of the documents and facts of the case, in order to see whether the plaintiff really has a cause of action.

As regards an application to strike out a claim on the ground of no reasonable cause of action at 18/19/5 in the *White Book*, it is said that the practice is clear. So long as the Statement of Claim or the particulars disclose some cause of action, or raise some question fit to be decided by a Judge the mere fact that the case is weak, and not likely to succeed, is no ground for striking it out.

With these principles in mind, first I consider the first defendant's application to strike out the plaintiffs' Statement of Claim. Now, in November 1979, 20 months before this application, the first defendant applied for an order that an issue be tried between the plaintiffs and herself. Undoubtedly, at that time, the first defendant's legal advisers were satisfied that there were crucial matters to be resolved between the plaintiffs and the first defendant in respect of the ACU deposits in the Bank. In March 1980, 16 months before this application, the first defendant failed in her application to have the Bank's Originating Summons for interpleader relief dismissed on the ground that it was misconceived. At that hearing, on the facts disclosed in the affidavits and the submissions made to me, I was satisfied that the claims of the first, second, and third defendants in the Originating Summons had to be heard. I directed that issues be stated and tried between the present parties, the plaintiffs, the first defendant, and the second defendants as to which of them is entitled to the sums of money in the ACU deposits.

I pause here to say that I take the view, as did Greer and Greene L.JJ. and Talbot J. in the Court of Appeal in England in *De La Rue* v. *Hernu, Peron & Stockwell Ltd*[1] that it is entirely wrong to "treat an issue directed under the interpleader rules as though it were an action" commenced by a writ of summons. As was said in this case, an interpleader issue is not an action but a proceeding in an action. "It is a method to enable the court to decide the claims between two persons present at the proceedings, and to decide those claims so that the person interpleading will get the relief to which he is entitled": per Greene L.J. at page 417. It is "for the purpose of informing the conscience of the court" that the court directs that an issue be stated. That being the purpose, in my judgment, no court will direct an issue to be stated unless it is satisfied that there is some cause of action to be tried between the parties or that the facts in issue raise some question fit to be decided by the court.

Reverting back to the facts, it was barely four months before this application that the issue was settled by counsel for the plaintiffs and the first defendant and the same was approved by me. I have already set the issue out fully. Clearly, there is a valid claim; the grounds of the claim are complex; and there are important questions for decision.

Since then, the plaintiffs have filed and served on the first defendant a lengthy Statement of Claim. As they claim to be the victim of fraud, they are entitled to cast their net wide. The Statement of Claim, however, leads to and supports the issue ordered to be tried. Further, the plaintiffs have, at the request of the first defendant, furnished Further and Better Particulars of their claim. The first defendant, too, has filed her Defence. There are also Further and Better Particulars of the Defence. There is also a Reply. Now there is on record 130 pages of allegations of facts on the issue to be tried.

After all these events have occurred, for the first defendant to come to court and say that the plaintiffs' Statement of Claim ought to be struck out on the ground that it discloses no reasonable cause of action is, I agree with Mr. Sherrard, manifestly absurd. In my judgment, this application of the first defendant to nullify the order of court that the issue be tried is frivolous, vexatious, scandalous and an abuse of the process. It ought never to have been made.

So far, I have dealt with the first defendant's application on the basis that the plaintiffs should not be deprived of their right to a trial on the issue. There is another point. It is this. If at the trial of the issue the plaintiffs can establish the facts they have set out to prove in their claim, then as presently advised on the law, I have good

reason to say that they will succeed in their claim. To support the view I express, I refer to the case of *Re Reading's Petition of Right*[2].

In this case, a sergeant in the army stationed in Cairo on several occasions, while in uniform, boarded a private lorry and escorted it through Cairo, thus enabling it to pass the civilian police without being inspected. The lorry was loaded with cases, the contents of which were unknown. On each occasion the sergeant was handed an envelope containing notes varying in value from £2,000 to £3,000. Upon investigation by the military authorities, it was discovered that large sums of money was standing to the sergeant's credit at banks in Egypt, in his flat were notes to the value of several thousand pounds, and he was possessed of a valuable motor car. Denning J. (as he then was) dismissed the petition of right in which the sergeant sought to recover the monies seized by the military authorities. The Court of Appeal (Tucker, Asquith and Singleton, L.JJ.) held that the sergeant was entrusted with a uniform to be used solely in the course of his employment for the benefit of the Crown, his master; a fiduciary relation existed between the Crown and the sergeant regarding the use of the uniform; the sergeant's use of the uniform was in breach of the duty he owed to the Crown; he obtained the sums in question by that breach of duty; and, therefore, the Crown was entitled to the money. Asquith, L.J. (as he then was), who delivered the judgment of the Court, said:

"The principles of law applicable to such a case as the present would seem to be the following. When a servant or agent by a breach of duty damnifies his master or principal, the latter can, of course, recover in an ordinary action for breach of contract for any loss he has actually suffered, but there is a well established class of cases in which he can so recover whether or not he has suffered any detriment in fact. These are cases in which the servant or agent has realised a secret profit, commission or bribe in the course of his employment, and the amount recoverable is a sum equal to such profit. In most of these cases it has been assumed that the plaintiff, in order to succeed, must prove that a "fiduciary relation" existed between himself and the defendant and that the defendant acted in breach of this relation, but the term "fiduciary relation" in this connection is used in a very loose, or, at all events, a very comprehensive, sense. A consideration of the authorities suggests that for the present purpose a "fiduciary relation" exists (a) whenever the plaintiff entrusts to the defendant property tangible or intangible (as, for instance, confidential information) and relies on the defendant to deal with such property for the benefit of the plaintiff or for purposes authorised by him and not otherwise ... and (b) whenever the plaintiff entrusts to the defendant a job to be performed, for instance, the negotiation of a contract on his behalf or for his benefit, and relies on the defendant to procure for the plaintiff the best terms available ... In such cases the defendant may accept a secret profit from a third person in consideration, for instance, of hiring out the plaintiff's chattel or giving away the plaintiff's secret or awarding the plaintiff's contract to such a third person, or, indeed, may make such a profit by himself masquerading as a third person and selling to, or buying from, the plaintiff in that guise. If he does so, he is bringing his duty to the plaintiff and his own interest into conflict in derogation of the fiduciary bond, and cannot be heard to say that duty prevailed and the plaintiff suffered no loss. The plaintiff, whether actually harmed or scatheless, is conclusively presumed not only to have been damnified, but to have been damnified to an extent measured by the amount of the secret profit received by the defendant ... This amount the plaintiff can recover, either as money had and received to his use, or as an equitable debt ..."

There remains for me to consider the plaintiffs' application to strike out parts of the Defence which are itemised in the Summons-in-Chambers No. 2425 of 1981. In the way I approach this application, there is no need to refer to those parts of the Defence here.

Admittedly, the Defence has to respond to the allegations of facts contained in the Statement of Claim. The plaintiffs have made clear what their case is. They say that a fiduciary relationship existed between the plaintiffs and Mr. Thahir. They say that in the course of that relationship, Mr. Thahir, to the knowledge of the first defendant, fraudulently obtained bribes and/or secret commissions from third parties. And they say that by virtue of this fiduciary relationship, the bribes and/or secret commissions belong to the plaintiffs.

The first defendant joins issue on these contentions of the plaintiffs. The plaintiffs make no complaint of the denials in the Defence. The denials are consistent with the issue.

But the first defendant also seeks to put forward a positive case. She says that the persons named in the Defence (included here too are the allegations made in the particulars) knew and/or consented to Mr. Thahir receiving monies from third parties. She says that the knowledge and/or consent of the persons named are knowledge and/or consent of the plaintiffs. And, as I understand Mr. Saville, he says that the first defendant does not say in her Defence either Mr. Thahir or any one of the persons named were doing anything unlawful or wrongful against the plaintiffs.

The question is whether this alleged positive case of the first defendant is on the face of it an answer that is sustainable or is it an answer that is "obviously unsustainable" against the

plaintiffs' claim. In other words, does this alleged positive case of the first defendant disclose a reasonable cause of defence to the claim of the plaintiffs. I accept the submission for the plaintiffs that it does not afford an answer to the plaintiffs' claim. The fact that anyone else knew that Mr Thahir had taken bribes and/or secret commissions is altogether irrelevant to the claim of the plaintiffs because the plaintiffs' claim is that they did not consent. In my view, if the plaintiffs can make good their claim, not any one of the allegations made by the first defendant, even if proved to be true, can amount to any defence in law. The authority I rely on is *Belmont Finance Corporation Ltd.* v. *Williams Furniture Ltd & Ors*[3]. It is not necessary in the present context to refer to the somewhat complicated facts in this case. The following passage of the judgment of Buckley L.J. at page 125 will suffice:

"On the footing that the directors of the plaintiff who were present at the board meeting on October 11, 1963 knew that the sale of the Maximum shares was at an inflated value and that such value was inflated for the purpose of enabling the third, fourth, fifth and sixth defendants to buy the share capital of the plaintiff, those directors must be taken to have known that the transaction was illegal under section 54 [of the Companies Act 1948]. It may emerge at a trial that the facts are not as alleged in the statement of claim, but if the allegations in the statement of claim are made good, the directors of the plaintiff must then have known that the transaction was an illegal transaction. But in my view such knowledge should not be imputed to the plaintiff, for the essence of the arrangement was to deprive it improperly of a large part of its assets. As I have said, the plaintiff was a victim of the conspiracy.

I think it would be irrational to treat the directors, who were allegedly parties to the conspiracy, notionally as having transmitted this knowledge to the plaintiff; and indeed it is a well-recognised exception from the general rule that a principal is affected by notice received by his agent that, if the agent is acting in fraud of his principal and the matter of which he has notice is relevant to the fraud, that knowledge is not to be imputed to the principal. So in my opinion the plaintiff should not be regarded as a party to the conspiracy, on the ground of lack of the necessary guilty knowledge."

Finally, there is the submission of Mr. Saville that the first defendant does not allege that either Mr. Thahir or any one of the persons named was acting unlawfully or wrongfully against the plaintiffs. It is, in my view, a perilous submission. It is for the reason that if the plaintiffs make good their claim that the monies in the ACU deposits are the proceeds of bribes and/or secret commissions, then the submission relative to Mr. Thahair must fail. More serious is, the irrelevant submissions of the first defendant against the persons named in the Defence who are not parties to these proceedings become not just offensive, they are scandalous. I agree with Mr. Sherrard that generally it is not proper to use the names of third parties in public proceedings, particularly when they are public officers or well-known and influential persons without scrupulously observing the rules of pleading and justifying the relevance of references to such persons. I am of the view that in these proceedings, the scandalous allegations made by the first defendant against the persons named in the Defence are calculated to prejudice, embarrass and delay the fair trial of this action. In my judgment it is the duty of the court to act at the earliest opportunity to strike out offending facts and matters in pleadings, particularly in the present proceedings where the pleadings were ordered by the court.

For the reasons I have given, I make an order that the parts of Defence referred to in paragraph one of the Summons-in-Chambers No. 2425 of 1981 be struck out and the result is that the directions sought by the first defendant is limited to the issues or matters stated in those parts of the Defence not expunged. The first defendant's application to strike out the Statement of Claim is dismissed. The first defendant will pay the costs of both applications to the plaintiffs.

Order accordingly.

Solicitors: *Selvadurai, Pala Krishnan & Partners; Drew & Napier; Braddell Brothers.*

DAVID ARROWSMITH v. CHANG LEE CHIN

[O.C.J. (Rajah J.) October 15, 1982]

[Singapore – Divorce No. 408 of 1982]

Family Law – Petition for divorce – Women's Charter – Divorce petition – Domicile – Neither party domiciled in Singapore – Court has no jurisdiction to hear petition – Women's Charter (Cap. 47), ss. 3(4), 45A & 80(1)(b)(i).

Divorce – Jurisdiction – Neither party domiciled in Singapore – Scope of Women's Charter (Cap. 47), s. 80(1)(b)(i).

The petitioner, a Caucasian and holder of British Passport was domiciled in England. On July 16, 1974 he married the respondent in Singapore. Subsequently, they left Singapore and lived in a number of places. Since leaving Singapore the respondent had not returned.

The petitioner filed a petition on April 2, 1982 on the ground that the marriage had broken down irretrievably